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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

MARY TOWNSEND COCHRAN,
Petitioner,

v.

GEORGE L. MORRIS and GIRARD TRUST BANK, EXECUTORS UNDER WILL, AND TRUSTEES UNDER DEED, OF MARY H. TOWNSEND, DECEASED; BRYN MAWR HOSPITAL; THE CHILDREN'S HOSPITAL OF PHILADELPHIA; FATHER FLANAGAN'S BOYS' HOME; BISHOP LEONARD'S CHARITIES, INC.; AMERICAN CANCER SOCIETY, PHILADELPHIA DIVISION, INC.; ESTATE OF JOSEPH F. MAGUIRE, DECEASED; RT. REV. MSGR. ALOYSIUS F. X. FARRELL; LILLIAN R. KELLY; EDWARD C. DURKIN, M. D.; ELIZABETH T. STOEBENAU; MOST REV. JOHN J. KROL, ARCHBISHOP OF PHILADELPHIA; ST. VINCENT'S HOSPITAL FOR WOMEN AND CHILDREN; WILLIAM C. SENNETT, ATTORNEY GENERAL OF COMMONWEALTH OF PENNSYLVANIA AS PARENS PATRIAE OF SUNDRY CHARITABLE BENEFICIARIES,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

Mary Townsend Cochran prays that a Writ of Certiorari issue to review the judgment of the Supreme Court of Pennsylvania entered in the joint appeals in this case,

said appeals being from judgments in the Orphans' Court of Montgomery County, Pennsylvania designated in said Supreme Court of Pennsylvania as Appeals No. 42 and 43, January Term, 1968 in Estate of Mary H. Townsend, and Appeals No. 44 and 45, January Term, 1968 in Trust Inter Vivos, Mary Hanlon Townsend, Settlor.

1(a). OPINIONS BELOW

The Opinion of the Supreme Court of Pennsylvania in this case is officially reported in 430 Pa. 318. Said Opinion is printed in the Appendix herein at page 41. A Petition for Re-argument and Supplement thereto were denied by the Supreme Court of Pennsylvania Per Curiam without opinion and this is not yet officially reported. A copy of the notification to Appellant of the denial is printed in the Appendix herein at page 47.

1(b). JURISDICTION

(i) The judgment of the Supreme Court of Pennsylvania was entered on April 16, 1968 (the time of entry not being noted under Pennsylvania practice).

(ii) The Petition for Re-Argument and Supplement thereto filed on behalf of the Petitioner herein were denied on May 24, 1968.

(iii) The jurisdiction of this Court is invoked under the Act of June 25, 1948, c. 646 62 Stat. 929, 28 U.S.C.A. § 1257 (3).

1(c). QUESTION PRESENTED FOR REVIEW

In a consolidated will and inter vivos trust contest in a State Court was not the petitioner-contestant under the circumstances of this case denied a fair trial by the trial court contrary to the Due Process provisions of the Fourteenth Amendment to the Constitution of the United States by the direct and indirect denial of access to, withholding and suppression of relevant and material evidence

both oral and written, both before and during trial, which evidence was and is largely within the possession or under the control of various of petitioner's opponents?

1(d). CONSTITUTIONAL PROVISION INVOLVED

This case involves the following italicized provisions taken from Section 1 of the Fourteenth Amendment to the Constitution of the United States:

> ". . . *nor shall any State deprive any person of* life, liberty, or *property, without due process of law*; . . . ."

1(e). STATEMENT OF THE CASE

A. Background

This case arises out of a dispute over the proper devolution of the estate, with an approximate gross value of $6,000,000. of Mary Hanlon Townsend who died a resident of Montgomery County, Pennsylvania on October 1, 1965 in her 89th year (Record 2194a). Mrs. Townsend and her husband (Charles D. Townsend, who had died December 3, 1960 (Record 1074a)) being childless had raised and educated petitioner (Record 1013a-1017a). She is the blood niece of Mr. Townsend (Record 1012a) and she and the issue of herself and her husband, Cmdr. Christian H. Cochran, U.S.N. (Ret.), are the sole survivors of the Townsend family (Record 1022a).

For several years prior to Mr. Townsend's death, George L. Morris (resident partner in Philadelphia of the stock brokerage firm of Hornblower and Weeks who retired as of the day prior to Mrs. Townsend's death Record 703a) handled Mr. Townsend's financial affairs, paid his bills under a Power of Attorney on one of his accounts, and was his co-executor and co-trustee with what is now the Girard Trust Bank (Record 1440a). Lillian R. Kelly (who had previously been child's nurse for petitioner's children (Record 959a)) was his practical nurse (Record

960a). After Mr. Townsend's death Mr. Morris and Miss Kelly performed the same aforesaid personal services for Mrs. Townsend as they had performed for Mr. Townsend (Record 960a and 1457a). In addition to other physical infirmaties of old age, by the Spring of 1963 at least Mrs. Townsend could no longer read and her hearing, which had always been a problem, became much worse (Record 619a-624a; 1169a; 1374a).

Under Mr. Townsend's Will one-half of his residuary estate was left outright to Mrs. Townsend, and the other one-half in trust for her for life and thereafter in further trust to petitioner and ultimately to her issue (Record 821a).

The life long warm mother-daughter relationship between petitioner and her aunt continued to the end (Record 1037a) (despite efforts by Miss Kelly to interfere after June 1962) and there were welcomed periodic visits by petitioner and her family (who were living in Chevy Chase, Maryland) to Mrs. Townsend at her home in Bryn Mawr, Pa. (Record 1033a). The last such visit was about three weeks prior to the onset of Mrs. Townsend's lapse into a coma during the night of June 16, 1965 from which she never fully rallied prior to her death in October of that year (Record 2278a).

In June 1962 Miss Kelly had interjected herself into the discussion with adverse comments when petitioner undertook to advise her aunt of the pending marriage of petitioner's daughter for whom as stated above Miss Kelly had been child's nurse. Petitioner, resenting Miss Kelly's comments, abruptly silenced her which led to a bitter dispute, following which Miss Kelly never spoke to petitioner's family again. At Mrs. Townsend's direction Miss Kelly thereafter absented herself when petitioner and her family visited (Record 1045a).

In March 1963 after petitioner received a copy of the Executors' Account in her Uncle Charles' Estate a dispute

arose between her and Mr. Morris and the bank about the hasty dumping of all 44,000 shares of her uncle's Standard Oil of New Jersey stock shortly after his death (Record 2457a) as she had understood from her uncle that Mr. Morris had been named co-executor to prevent just such an occurrence. There were also questions over cash items accounted for in the estate which amounted to only about one-half of the $800,000 in cash which Mr. Morris had mentioned to petitioner's husband at Mr. Townsend's viewing and which figure he had also mentioned later to Mrs. Townsend as the amount of cash held by Mr. Townsend at his death (cf. Record 2461a).

Following Mrs. Townsend's death on October 1, 1965 it finally came out after two months of skirmishing that, despite her age and infirmities, there were no less than sixteen documents of a testamentary nature allegedly executed by her in the four and a half year interval between her husband's death in December 1960 and the onset of her final illness in June 1965, and the originals of fifteen thereof were still extant. A list and abstract of said documents (which gives some hint of the remarkable complexity of the scheme) is set forth in the Appendix herein at page 52. It will be noted that in all of said documents prior to those dated February 20, 1964 petitioner and her issue were left the bulk of the estate, and in those dated February 20, 1964 and later petitioner and her issue were virtually disinherited as she and her husband received but relatively small bequests.

The instruments dated February 20, 1964 also continue the pattern of granting or increasing benefits to those whose loyalty would be very helpful or necessary to Mr. Morris in the event of a contest, which policy is first particularly noticeable in the Codicil dated April 30, 1963 (which is shortly after petitioner first questioned items in Mr. Morris and the bank's Account in her uncle's estate).

Since the contest in this case involved not only the issue as to which instrument was the valid last will of decedent

but also the validity of the alleged inter vivos deed of trust dated July 11, 1963 and amendments, under which Mr. Morris and the bank held almost all of decedent's securities at the time of her death, two separate proceedings were required in the Orphan's Court of Montgomery County, Pa., one involving the will contest being designated by the caption:

In the Orphans' Court of Montgomery County, Pa.

No. 66,431

Estate of Mary H. Townsend, Deceased.

and another suit involving the validity of the trust which is listed under the caption:

In the Orphans' Court of Montgomery County, Pa.

No. 66,759

Trust Inter Vivos: Mary Hanlon Townsend, Settlor.

These two suits, together involving the totality of decedent's transferable property at the moment prior to death, were eventually consolidated for purposes of discovery and trial by order of the trial court on June 9, 1966 (Record 344a) and they have been for all practical purposes treated as one suit since.

Very early in the case, Petitioner became aware that because:

(1) After the death of Mr. Townsend, Miss Kelly had been in charge not only of the decedent's household but also the care of her person, and Mr. Morris had been in charge not only of her financial affairs but also to a great extent was the intermediary in the preparation of her testamentary documents; and

(2) most of the potential fact witnesses had an interest in upholding the documents which disinherited petitioner in view, inter alia, of their benefits thereunder.

most potential witnesses could be expected to be adverse, and that many or most of the relevant documents would be in the possession or control of petitioner's opponents.

B. Documents

Accordingly, petitioner proposed to obtain for purposes of pleading and trial under the then local discovery rules (which were almost as liberal as those of the Federal Rules of Civil Procedure):

An examination of all relevant or potentially relevant documents including:

> (a) all documents of a testamentary nature allegedly executed by decedent after the death of her husband together with her last will executed prior to the death of her husband on December 3, 1960 or copies where the originals did not exist; and
>
> (b) Copies of all memoranda, correspondence and writings relating to the aforesaid documents and/or the dealings of Mr. Morris, Girard Trust Bank and John Bishop, VI, Esq. or his firm (the draftsmen of the testamentary documents) with the decedent (Record 20a-27a). (In view of a family agreement that petitioner and her family were to inherit the Townsend Estate similar documents relating to Charles D. Townsend were also sought but the family agreement issue was ruled out of these proceedings by the Trial Court (Record 215a).)

A Motion for the production of the foregoing documents was filed on November 3, 1965 (Record 20a-27a) and as a result of this and other efforts by petitioner, she received copies of, and had access to for inspection, the requested alleged testamentary writings of decedent. But of the additional documents requested above she ultimately was given access only to certain records concerned with activity of decedent (and in part her husband) relating to her safe deposit boxes at the Bryn Mawr Trust Company and The First Pennsylvania Banking and Trust

Company, including the contracts for the boxes and certain access cards or tickets, together with a list of securities removed from her box on January 21, 1964 and placed with Mr. Morris and Girard Trust Bank as Trustees under the aforesaid Deed of Trust. In addition, she received certain medical, drug and Bryn Mawr Hospital records relating to decedent.

But the trial Court affirmed the withholding and suppression of memoranda, correspondence and writings relating to decedent's testamentary writings and/or the dealings of her financial adviser, Mr. Morris, her bank, Girard Trust Bank, and her lawyer, Mr. Bishop, by its Special Order filed March 7, 1966 ruling, inter alia, that no further or additional documents would be required prior to trial (Record 188a). At the trial, the Court then held in effect that petitioner was not even entitled to reach these records by subpoena for use at the trial (Record 433a-437a and Trial Court Opinion dated 3/29/67—Appendix at p. 28).

It is perhaps appropriate to note here some of the lengths to which the Trial Court went in denying access to these documents to Petitioner:

(a) On February 25, 1966 there had been an argument on Petitioner's Motion for the Production of Documents and under the rules in force at that time there seemed to petitioner to be little question but that she was entitled to the documents sought. Petitioner was thus completely unable to understand the Court's Opinion and Order of March 7, 1966 restricting discovery in view of what she thought were the applicable rules of court. A few days later, however, the Montgomery County Law Reporter carried notice that the Orphans' Court (consisting of one Judge) had issued a new Rule 36.1 (under date of March 4, 1966) which barred all discovery in the Orphans' Court except such as was specially allowed by the Court. This Rule 36.1 has since been facetiously referred to as the "Townsend Estate Rule".

(b) The Court below doubly insured that the documents sought would not only not be seen by Appellant but would not even be seen by any neutral party when it dismissed Appellant's Appeal from the Register of Wills' appointment of the Girard Trust Bank as Administrator Pendente Lite. Although the Court below in its Order dated December 1, 1965 held that an Administrator Pendente Lite should be appointed and directed the Register of Wills to grant such letters:

> ". . . to some fit and *wholly disinterested* person or person." (Emphasis ours.) (Record 49a)

it subsequently and not very consistently upheld the appointment of the Girard Trust Bank in spite of all of said bank's following conflict of interest disqualifications:

(1) Girard Trust Bank as Co-Executor was one of the Proponents of decedent's last "Will" dated June 14, 1965. The Administrator Pendente Lite would presumably receive temporarily records, such as cancelled checks, belonging to decedent. In its efforts to qualify as Co-Executor under said "Will" it was interested in withholding said checks from petitioner to the extent that they might assist in her attack on said "Will".

(2) Girard Trust Bank was the bank in which decedent maintained her principal personal checking account, subject only to her personal signature. If, as believed by petitioner, no check after sometime at least as early as 1963 bore decedent's own signature, said bank for this reason was not a wholly disinterested person.

(3) Girard Trust Bank was Co-Trustee of the Estate of Charles D. Townsend in which decedent was the initial life beneficiary. As such Co-Trustee it might have been required to account to itself as Administrator Pendente Lite. For this reason it was not a disinterested person.

(4) Girard Trust Bank was Co-Trustee of an Inter Vivos Deed of Trust allegedly executed by

decedent but under attack by petitioner as a forgery. For reasons similar to those mentioned under sub-paragraph (1) above, said bank was not a disinterested person.

There is more than a little irony in the lower Court's position with respect to documents. Petitioner was permitted to interrogate at length, by way of cross-examination (and for the most part without objection), decedent's attorney-scriveners as to their versions of all that took place with the decedent relating to the testamentary documents in question, going into the conception, initiation, drafting and execution of all testamentary documents. Yet the production of whatever written evidence there might be either to substantiate or refute the oral testimony of these hostile witnesses, could not be obtained and these writings become impregnably protected by some high but undefined privilege, or by some obscure "irrelevance".

C. Witnesses

Petitioner sought to take the deposition of some thirty-three witnesses, all but one or two of whom were either listed by her opponents in answers to interrogatories as persons having relevant information, had something to do with the decedent's alleged testamentary documents as witnesses, typists, notaries, etc., or were known to have had repeated contact with decedent during the period in question. However, the trial court limited petitioner to the taking of six depositions and the *court picked the six to be deposed!* (Record 188a-189a).

It might have been (though it is unlikely) that, if petitioner had subpoenaed all these other twenty-seven persons for testimony at trial, they would have been heard. But many of these persons had an interest in the questioned documents adverse to petitioner and petitioner might have been unable before the end of the trial to check their testimony and refuste it if it were false. The

practical denial of access to these witnesses was approved by the Pennsylvania Supreme Court on the ground that petitioner was merely involved in a fishing expedition and that excuse covered denial of access even to those witnesses whom petitioner's opponents listed as relevant witnesses in answers to interrogatories.

Petitioner did however of necessity call certain of these adverse witnesses and was permitted to question them as on cross-examination at trial. But when she did so, she ran into further suppression of evidence through restriction of the cross-examination. For example, Philip Price, Esq. appeared as a witness on the Codicil and Deed of Trust Amendment dated February 20, 1964 which instruments were the first purporting to disinherit petitioner.

Mr. Price's testimony flowed on with composure and self-assurance until he emphasized the fact that the decedent was not a person who vacillated but was one who knew what she wanted and, although a gentle person by nature, was capable of making her wishes known clearly and firmly and did so.

In view of the alleged firm mindedness of decedent on February 20, 1964, as contrasted with the fact that only two and one-half weeks later, on March 6, 1964, Mrs. Townsend allegedly revoked the February 20, 1964 instruments and executed others which eliminated the Philadelphia Museum of Art as one of the residuary beneficiaries, Mr. Price was then asked when he first learned that Mrs. Townsend was dissatisfied with the instruments dated February 20, 1964. Quoted below are excerpts from the Notes of Testimony which followed (Record 833a-836a):

Q. When were you first made aware that Mrs. Townsend was not satisfied with this will?
A. After the new one had been executed.
Q. That was on February 20th?
A. No, the will that—

Q. You mean the—

A. (Continuing)—I witnessed was executed on February 20th, and she changed it, I think, by a codicil dated March 6th.

Q. Right.

A. And, I didn't know until after March 6th that the change had been made. I had been away.

Q. When did you leave?

A. I couldn't tell you that offhand, either. It was shortly after the 20th of February; perhaps the last week in February, and I was gone for maybe ten days, two weeks, perhaps. I knew nothing about the change, either being suggested or desired or accomplished, until after I returned.

Q. Do you recall where you went at that time?

A. To the West Indies.

Q. By ship?

A. No, I went to the West Indies on a cruise on a ketch, for a week or ten days.

Q. On a ketch?

Could you give us the name of the ketch?

THE COURT: Mr. Eichman, please. We will be here forever.

Please get down to relevant matters.

MR. EICHMAN: I would like to have the name of the ketch.

THE COURT: All right. I will let him give it to you.

BY MR. EICHMAN:

Q. What was the name of the ketch?

A. It was a private ketch chartered by Mr. Mortimer Newlin and Mr. Wilfred Battles and me, for a week or ten days. The ketch was a—ninety feet long; she had a crew of eleven, and I can't, for the life of me, think of her name.

If it comes to me, I'll tell you.

Q. Out of what port?

A. Well, I got aboard at Martinque and we sailed to English Harbor.

Q. How did you get from Philadelphia to Martinique?

MR. MARUTANI: I object.

THE COURT: Is this relevant, Mr. Eichman?

MR. EICHMAN: Yes, it is, your Honor.

THE COURT: Show me how it is relevant?

MR. EICHMAN: It is relevant to verify the fact that he was in Philadelphia on February 20th.

THE COURT: Do you mean to say he was not in Philadelphia?

MR. EICHMAN: I don't accept it as a fact, your Honor.

THE COURT: I sustain the objection and grant you an exception.

MR. EICHMAN: Thank you, your Honor.

THE COURT: Are you saying to me that Mr. Price was not in Philadelphia on February 20th?

MR. EICHMAN: I don't say that, your Honor. I merely say that I have the right to question it.

THE COURT: Do you have any evidence that he wasn't?

MR. EICHMAN: I may have after he tells me—he gives me his itinerary and I can check it. I may not.

THE COURT: I have ruled. I sustain the objection.

The morning following the above testimony, proponent's trial counsel stated for the record that the name of the yacht that Mr. Price boarded at Martinique allegedly right after February 20, 1964 was the "Harbinger." (Record 850a)[1]

---

[1] It is respectfully urged that the Court below was never more wrong than when, after having first denied Appellant the right to take Mr. Price's pretrial deposition, the Court at trial then refused to permit Appellant not only to test Mr. Price's veracity, but also to establish whether or not his testimony was even physically possible through questions intended to establish whether or not he was even within the boundaries of continental United States on February 20, 1964. After Mr. Price testified so positively that he was personally present on that date in Mrs. Townsend's home in Bryn Mawr, Pa. and saw her, at the advanced age of 88 years, sign the

Contrary to the statement in the Pennsylvania Supreme Court Opinion (Appendix at page 46), however, neither Mr. Price's counsel nor Mr. Price have ever given the desired details concerning his itinerary, with dates and modes of travel from the time he left Philadelphia on this trip to the West Indies until his return. Also contrary to the inference that might be gathered from the aforesaid statement in the Pennsylvania Supreme Court's Opinion, Petitioner has never abandoned her efforts to obtain the withheld information. (Cf. Appendix at p. 46 par. 1).

There is still another type of suppression of evidence in this case.

Charles A. Appel, Esq. (a member of the Bar of the District of Columbia and of this Court, who founded the Federal Bureau of Investigation's Questioned Documents Laboratory (Record 865a) and who was conceded by the trial court in its Opinion to be "a highly competent expert" (Appendix page 34), not only testified that in his opinion all of the testamentary documents allegedly executed by decedent after 1962 were forgeries, but also graphically demonstrated the basis of his opinion (Record 872a-932a). He was not cross-examined and no rebuttal handwriting expert testimony was offered. All of this, was held by the trial court (sustained by the Pennsylvania Court) to be entitled to little or no weight in view of direct testimony of decedent's execution thereof by witnesses found credible by the trial court (Appendix page 35).

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papers which first disinherited Appellant whom she had raised and loved a lifetime as a daughter in favor, inter alia, of two of Mr. Price's favorite charities, it did not seem conceivable that the Court below could have denied Appellant the only opportunity she had at trial to show, if such were the case, that Mr. Price's word picture of the will signing at decedent's residence on February 20, 1964 was entirely wrong. Nevertheless, this is exactly what the trial court did and Pennsylvania Supreme Court approved as a proper exercise of discretion.

However, there was, inter alia, one alleged amendment to the alleged deed of trust in question that was so obviously signed by decedent's housekeeper-nurse (although one of the "credible" witnesses also testified that decedent signed this amendment) that both the trial court and the Pennsylvania Supreme Court found it expedient not to attempt to mention it or explain it away, and they did not even include it in their enumeration of the amendments to the deed of trust. Some notion of how obvious this all is may be gathered from a glance at Panels I and II reproduced in the Appendix at page 51. Panel I consists of admittedly genuine signatures of decedent. The first signature on Panel II is taken from the *unmentionable* amendment dated January 17, 1964 and the second signature on Panel II is the name of the decedent written by the housekeeper-nurse during her deposition in this case (Record 1325a).

If even a Justice of the Supreme Court of the United States took pen in hand to write his signature with his vigorous young law clerk "assisting" by the latter's enclosing his hand over that of the Justice, it is a certainty that their combined efforts would not and could not produce a result that would perfectly resemble the handwriting of the law clerk. Yet that kind of "assistance" by the housekeeper-nurse is the only explanation that she could suggest to explain the similarity of the two signatures reproduced on Panel II in the Appendix (Record 1324a. Cf. also Record 1215a).

1(f). FEDERAL QUESTION RAISED.

A. In the Trial Court.

(a) In March 1966 petitioner had filed an appeal in the Supreme Court of Pennsylvania, inter alia, from the Opinion and Order of the Trial Court dated March 7, 1966, which first limited petitioner's discovery and which appeal was quashed presumably on the ground that the

question was then interlocutory. The notice of this appeal to the Trial Court (Record 192a) reads as follows:

> "II. Appeal From Your Honorable Court's Special Order or Decree Barring Caveator From Access to Any Additional Documents Prior to Trial, and Limiting Caveator's Taking of Depositions Prior to Trial to the Six Persons Named:
>
> (1) Your Honorable Court's directing argument on February 25, 1966 on the limited subject of . . . . "Objections of Girard Trust Bank and George L. Morris to contestant's interrogatories and depositions and their motion for a protective order" . . . (by Order appended to Opinion sur Preliminary Objections to Supplemental Caveat, which order was also dated February 18, 1966 but from which no appeal is taken) followed by the court's hearing argument from Caveator's opponents on matters going beyond this limited question over the objections of Caveator's counsel, and despite the fact that the facts necessary for said argument were not yet in the record, was such a violation of the procedures indicated by Sup. Ct. O. C. Rule 31 and Pa. R.C.P. 1501 and 2099 as to amount to a lack of due process under the Pennsylvania and Federal Constitutions."

(b) Questions of due process and fair trial were raised on behalf of Petitioner at various points in the Trial Court. It is clear from the colloquy between the Court and counsel (which appear in the Record at 353a-354a, which is reproduced in the Appendix hereto at page 49) that Petitioner persisted in her preservation of these rights. As will be seen from a reading of the aforesaid Record, at the opening of trial, after copies had previously been given to the Court and counsel, Petitioner filed the original of a document entitled "Objections and Requests for Exceptions", which is referred to by both the Trial Court and counsel as a "motion", which "motion" reads in part as follows:

"I. Re Opinion and Special Order Sur Objections to Caveator's Interrogatories and Depositions Entered March 7, 1966 (Filed Under No. 66,431).

"A. Caveator-Contestant, having already objected to the above Opinion and Special Order by appealing therefrom to the Supreme Court, has never waived said objections and now restates the same by attaching and incorporating herein the applicable paragraphs of Notice of Appeal to the Ruling Judge under Supreme Court Rule 63, and respectfully requests "an exception on account thereof. . . ." (Record 273a)

(c) The notice of appeal to the Supreme Court of Pennsylvania addressed to the Trial Court on the instant appeal reads in part as follows:

"The reasons for the appeals appear in the Petition to Set Aside Final Decree dated March 29, 1967 attached as Exhibit B to the Petition for Leave Nunc Pro Tunc filed on April 21, 1967 on behalf of Mary Townsend Cochran, Caveator-Contestant in the above proceedings." (Record 317a).

The Exhibit B referred to therein contains, inter alia, the following assignment of error:

". . . (d) Granting Contestant leave to complete her discovery as requested in her motions in the record, which motions are incorporated herein by reference thereto, pursuant to the principles announced in *Thompson Will*, 416 Pa. 249, and after completion thereof to file a final amended caveat and complete her case; . . ." (Record 312a).

One of the "motions" referred to in (d) above is petitioner's Objections and Exceptions submitted to the Trial Court at the opening of trial, the relevant portions of which are quoted under (b) above.

The Trial Court did not pass upon the constitutional question with relation to discovery, stating merely that the petitioner's claim to the right of discovery was based

upon *Thompson Will*, 416 Pa. 249 (which was only one of the grounds advanced) and holding that the discovery allowed was within the rule of *Thompson Will* (see Opinion of the Trial Court—Appendix at pages 27 and 37).

B. In the Supreme Court of Pennsylvania

This question was raised by petitioner in the following manner in her Brief to the Supreme Court of Pennsylvania:

1. "STATEMENT OF FIRST QUESTION INVOLVED.

1. Where the validity of documents of a testamentary nature was under broad attack, did not the Court below err, in limiting Contestant, by a series of opinions, orders and rulings, to deposition access, for purposes of pleading and preparation for trial, to only six individuals arbitrarily chosen by the Court for said purposes out of more than thirty persons having potentially relevant and material information, and in denying Contestant subpoena access even at trial to relevant or potentially relevant written material? (*Negatived below.*)"

"SUMMARY OF ARGUMENT THEREUNDER.

Among Proponents of decedent's alleged Will and Deed of Trust were decedent's housekeeper-practical nurse, her physician, her financial-adviser, her attorneys, her bank, and alleged trustees who among them had in their corner all of the witnesses on the sixteenth testamentary documents allegedly executed by decedent after her husband's death in December, 1960, and further were in possession of most of the documentary material necessary for Appellant to plead and prepare for trial. Despite this, the Court below kept a tight lid on discovery and thus violated not only the liberal discovery requirements of *Thompson*

Will, 416 Pa. 249 but even the fair trial requirements of due process."

2. "STATEMENT OF SECOND QUESTION INVOLVED.

2. After an attorney testified that he saw decedent sign allegedly forged instruments, did not the Court below err in ruling out certain cross-examination bearing on whether or not said attorney was even in the country on the date involved? (*Negatived below.*)"

"SUMMARY OF ARGUMENT THEREUNDER.

One of the subscribing witnesses to the "Codicil" and "Deed of Trust Amendment" dated February 20, 1964 which first disinherited Appellant testified that he saw decedent sign them in her home in Bryn Mawr, Pa. on said date and then left for the Caribbean. The Court below would not permit Appellant's counsel to follow up questions designed to determine whether said witness actually left the United States prior to February 20, 1964, thus violating due process or at least abusing its discretion on a critical issue."

3. In the Argument as evidenced by the following excerpts:

"However the Court below was not able to accomplish said purpose (if that was its purpose) without material errors of fact and law and without a departure from due and established procedure so basic as, inter alia, to violate the due process clauses of the Pennsylvania and Federal Constitutions . . . ." (Brief pg. 23).

". . . then before it can be held that Appellant has received even the semblance of a fair trial she must be given the same access to these checks and

other documents as the Proponents had." (Brief pg. 36).

4. The Supplement to Appellant's Petition for Re-Argument reads in part as follows:

> "In view of the denial so far of access to proper cross examination and discovery, does not what Appellant ask go far beyond the question of a reasonable exercise of discretion of the trial court to the very question of basic due process and the requirements of a fair trial under any rule of law, including that imposed by the Federal Constitution via the XIV Amendment thereto?"

The Supreme Court of Pennsylvania did not pass specifically on the issue of due process. However, it did dismiss generally with the following language the contentions raised by petitioner which were not specifically discussed in the Opinion:

> "We have carefully considered all of appellant's contentions, and find no merit in any of them." (Appendix at page 47).

1(h). REASONS FOR GRANTING THE WRIT

It is hoped that the Supreme Court of the United States will be able prima facie to agree with Petitioner's contention that the Pennsylvania State Courts effectively denied her a fair trial under circumstances set forth above and that the denial was flagrant despite studied efforts to comply with the procedural formalities.

If your Honorable Court cannot so agree that will end the matter, so far as this Petition is concerned.

But if Petitioner's contentions do seem to have merit, then the basic question on this Petition might be not only whether the matter involved with respect to its nature and amount is substantial, but also whether public as well as private rights are affected.

It can hardly be gainsaid that, subject to proper controls, the right of a person by will to direct the disposition of his property after death, whether much or little, and the right of a family or others to inherit from those who have preceeded them, have long been cherished rights of all men and held evidence of a free society. This being so, the amount involved might not be critically important but if it is, since the right to several million dollars is in dispute here, this case would qualify on that score.

It would likewise seem true that a particularly flagrant denial of due process in a trial in a state court involving important property rights if not corrected will place in jeopardy the property rights of all who are compelled to litigate their property rights in those courts by inviting repetitions of the denial in subsequent cases.

The protection of the public against violations of the due process or fair trial provisions of the Fourteenth Amendment by the State Courts has been an obligation which this Court has in recent years been particularly alert to assure despite the most vigorous opposition and vituperation against it. Although most of your current cases involve the deprivation of the higher rights of life or liberty as distinguished from property, nevertheless all of these rights including property are guaranteed in the same phrase and in the same terms, perhaps because those who drafted the Fourteenth Amendment recognized that they are, to a great extent, interdependant.

We respectfully urge that this is indeed a case which cries out for a reaffirmation of the federal requirement that State Courts may not deprive persons of property without due process, and that State Courts which fall into error in this regard may not safely escape review by failing specifically to rule on due process and fair trial questions in cases involving property rights any more than they could escape review in cases involving personal rights. If a review is not granted by this Court in an

appropriate case then the Fourteenth Amendment could soon become a dead letter in so far as property rights are concerned.

1(j). CONCLUSION

The size of the large record in this case is grossly deceptive. If there are as many as one thousand relevant documents and one hundred witnesses in a case, a litigant might be very effectively denied a fair trial under the guise of the greatest fairness by the suppression of a single critical document or witness. And when the suppression is as broad as it was in this case, petitioner having been unable to evaluate the evidence which she has in light of the missing parts in the hands of her opponents, she was forced to put into evidence just about everything that she could get in.

No cases were cited in support of the granting of this petition in view of the fact that it is addressed to the broad discretion reserved to itself by this Court in the forepart of its Rule 19 and further because most if not all of the recent Fourteenth Amendment due process cases have involved personal rights as distinguished from property rights. But Petitioner has assumed, in the absence of a case to the contrary, that the Fourteenth Amendment in its entirety is still a vital part of the Constitution of the United States.

Petitioner's opponents might be expected to urge that she did not sufficiently preserve the Federal Question. If this point is reached, as Petitioner hopes it will be, Petitioner respectfully suggests that the Federal Question was more elaborately preserved here than it was in many of those personal rights due process cases wherein Certiorari was granted by this Court.

WHEREFORE, for the foregoing reasons, it is respectfully urged that a Writ of Certiorari be issued in this case.

Respectfully submitted,

JOHN A. EICHMAN, 3RD
Attorney for Petitioner

Of Counsel:

HENRY I. KOPLIN
ELVIN R. SOUDER
CLARK, SPAHR, EICHMAN & YARDLEY

APPENDIX

IN THE ORPHANS' COURT OF MONTGOMERY COUNTY

No. 66,759

TRUST INTER VIVOS: MARY HANLON TOWNSEND, SETTLOR

* * * *

No. 66,431

ESTATE OF MARY H. TOWNSEND, (also known as MARY HANLON TOWNSEND,) DECEASED

* * * *

OPINION AND DECREE SUR MOTION TO DISMISS APPEAL FROM PROBATE AND PROCEEDING TO HAVE INTER VIVOS DEED OF TRUST DECLARED INVALID.

* * * *

APPEARANCES:

ELVIN R. SOUDER, ESQ., JOHN A. EICHMAN, 3RD, ESQ., HENRY I. KOPLIN, ESQ., and ALEXANDER A. ZVEGINTZOV., ESQ., for Mary Townsend Cochran, contestant;

WRIGHT, SPENCER, MANNING & SAGENDORPH, by WILLIAM P. MANNING, JR., ESQ., and MACCOY, EVANS and LEWIS, by WILLIAM M. MARUTANI, ESQ., and PHILIP A. BREGY, ESQ., for The Children's Hospital of Philadelphia, Father Flanagan's Boys Home, and American Cancer Society, Philadelphia Division, Inc., proponents;

SMITH, AKER, GROSSMAN & HOLLINGER, by J. BROOKE AKER, ESQ., and DECHERT, PRICE & RHOADS, by ARTHUR C. DORRANCE, JR., ESQ., for George L. Morris and Girard Trust Bank, trustees under deed, proponents;

JOSEPH NEFF EWING, ESQ., and THOMAS S. WEARY, ESQ., for Bryn Mawr Hospital, proponent;

WATERS, FLEER, COOPER & GALLAGER, by DONALD A. GALLAGER, ESQ., for Girard Trust Bank, administrator pendente lite;

DANIEL L. QUINLAN, JR., ESQ., and THOMAS B. HARPER, III, ESQ., for Lillian R. Kelly, respondent;

FOX, DIFFER, DIGIACOMO & LOWE, and JAMES E. GALLAGHER, JR., ESQ., for Most Reverend John J. Krol, Archbishop of Philadelphia, and for St. Vincent's Hospital for Women and Children, proponents;

VINCENT C. VALDORALE, ESQ., for Right Reverend Monsignor Aloysius F. X. Farrell, proponent;

* * * *

TAXIS, P.J.

These proceedings were instituted by Mary Townsend Cochran, a niece of decedent's husband, to challenge the validity of decedent's last will dated June 14, 1965, as well as her inter vivos deed of trust dated July 11, 1963 and three later amendments thereto. Decedent died on October 1, 1965.

The will was of the "pour-over" type and gave substantially all of decedent's estate to the existing inter vivos trust. As originally created, this trust provided a life estate for Mrs. Townsend, and subsequent interests for the benefit of the contestant herein and her issue. This deed was first amended on February 20, 1964, the settlor at that time substituting certain charities for con-

testant and her issue. This basic pattern was continued in the amendment of March 6, 1964, except that the charities named were changed to Boys Town, Bryn Mawr Hospital, American Cancer Society, and the Children's Hospital, each with a one-fourth interest.

By June 14, 1965, testatrix had transferred a substantial portion of her assets to the trust account, and consequently her existing will was revised to the one here under attack. Certain legacies were removed from the will to the amended deed of trust, the principal alteration of interest here being reduction of contestant's $100,000 legacy to one of $10,000.

When decedent's will was offered for probate, it met with an informal caveat filed by contestant. The matter was certified to this Court by the Register of Wills, and a formal caveat was filed, on October 18, 1965. Objections as to the sufficiency of this caveat were filed and sustained by the Court, but leave was given to file a supplemental caveat. This was submitted on December 3, 1965, but this again was declared insufficient in law upon objection.

Throughout this proceeding, contestant has sought extensive discovery prior to hearing, including the taking of depositions of numerous persons, as well as the production of documents and records covering a period of many years prior to the execution of the will and deed of trust, together with much correspondence between Mrs. Townsend and her counsel and financial representatives. This discovery was claimed on the authority of *Thompson Will*, 416 Pa. 249, where the Supreme Court indicated that requests for discovery in matters such as these should be considered "with liberality as the rule," in holding that an appellant from probate should be given an opportunity to amend his original appeal when it is adjudged inadequate in law.

Much of the material sought by contestant through discovery was made available voluntarily, without requiring an order of Court. Other material was justifiably withheld as privileged or irrelevant. The Court also allowed the depositions of six important witnesses to be taken, which testimony covered more than one thousand transcribed pages. Subsequent to all of this discovery, contestant filed a second supplemental caveat.

Preliminary objections were again filed to the second supplemental caveat. After these objections were argued and briefs filed, the Court entered an order on October 3, 1966, dismissing the preliminary objections and ordering the case to hearing. Before passing to a discussion of the merits, we feel impelled to point out that the defects which existed in the original and supplemental caveat continued to be present to a disturbing extent in the second supplemental caveat as well. Although the various grounds upon which contestant relies to attack the documents in question are at one point or another set forth therein as legal conclusions, the substance of the thirty-four page document is often vague and uncertain, and contains an array of suspicions, conjectures and assumptions not properly in such a pleading and not relevant to a determination of issues. From an excess of caution, however, and in an attempt to dispose of this controversy with some degree of dispatch, we have allowed it to be heard on its merits.

Caveator attacks the documents in question for almost every basic reason that could be advanced to invalidate them. These include lack of testamentary capacity, undue influence, forgery, fraud, misrepresentation, and conspiracy. Because of the fact that there are five instruments actually involved, and because of the simple pour-over nature of the will, these proceedings were consolidated for purposes of the hearing and can be disposed of together. The said five documents are all adverse to contestant's interest, and consequently all five must be suc-

cessfully invalidated by her for her to succeed in the present proceeding.

The hearing proceeded in a conventional fashion. The proponents recognized their initial burden of proving the execution of the challenged instruments, and did so by virtue of the testimony of the various subscribing witnesses thereto, who were John Bishop, IV, Esq., William Blackman, Gladys Ayres, Philip Price, Esq., and Lillian R. Kelly. The testimony of these witnesses, all of whom appeared highly credible even under the intensive cross-examination to which contestant's counsel subjected them, amply proved the execution of the five instruments, and the conclusion at this point was inescapable that they were properly executed, by a person who had the capacity to do so and who was not at the time acting under any influence to do something which she did not wish to do.

Under normal procedures, this cast upon contestant the burden of producing evidence to overcome the presumption of validity which was established by this testimony. Contestant at the hearing, and later upon argument, contended, however, that in this case such a rule should not have been followed, inasmuch as her allegation of forgery left the matter of valid execution still in doubt and unproven. Contestant points out that Miss Kelly was required to assist Mrs. Townsend in the mechanical execution of her signature on one occasion and also that documents executed at the same time do not have the same witnesses; further, that physical examination of the signatures shows that they are not all the signatures of the same person and that physical discrepancies can be discerned in the writings if a strong light is used in their examination.

We do not consider these observations convincing in the light of the unequivocal testimony of the subscribing witnesses; but even if we did, we do not think they would be germane to the problem. We are not holding, at this

point, that the execution of these documents was conclusively proven or that that issue goes out of the case. We are dealing only with the orderly presentation of evidence, and the rules which the law has fashioned to permit a logical trial of these issues. The fact that forgery of these documents was alleged cannot affect the shifting of the so-called burden of proof, any more than allegations of other defects.

In this connection, contestant cites *Cressman Est.*, 346 Pa. 400, 404, where the Supreme Court quoted with approval the following language of the opinion in the Court below:

> "Where a will was properly executed in every particular, a presumption of testamentary capacity and lack of undue influence arises, compelling evidence to upset the will, since the law favors its validity, unless it appears that the testator for some time prior to its execution has been mentally incapable of transacting business, in which event the burden of proof is on the proponent of the contested will . . ."

Apart from the fact that this does not infer that any special problems are raised by an allegation of forgery, this language does nothing to undermine the rule that after proof of proper execution, the burden of upsetting a will is upon contestant. In *Cressman Est.*, supra, it seems clear that the burden of showing that the testator had been "mentally incapable of transacting business" would be placed upon the contestant; only *after* he meets this burden, would the proponent be required to proceed with further proof of the validity of the will. We specifically hold, therefore, that the burden of producing evidence to invalidate the documents in question passed to the contestant after the proponents duly proved their execution.

We consider now the various grounds alleged by contestant for her attack on the documents before us. The

first is lack of testamentary capacity which, although technically applicable only to the will, carries with it inferentially the allegation of a lack of legal competence in the execution of the deed of trust. Contestant concedes, however, that no evidence of a lack of testamentary capacity or of incompetence on the part of decedent was produced.

A somewhat more complex problem exists in the case of the allegation of undue influence. Contestant argues principally that Mrs. Townsend was so mentally and physically infirm that she became unnaturally susceptible to the undue influence of her close and confidential advisers, which in turn imposes upon them the obligation to come forth with evidence to prove the lack of exercise of any such influence by them. See *Paul Will*, 407 Pa. 30. There are several insurmountable factual and legal difficulties with this position.

First, contestant depends for her evidence of decedent's infirmity chiefly upon the testimony of Dr. James D. Ripepi, an obviously qualified psychiatrist, whose testimony impressed the Court as far as it went. However, Dr. Ripepi never saw decedent. He did examine her hospital records, her X-ray and medical reports, and he acquainted himself fully with the nature and amount of the medication which she took; in short he became as well informed, *post mortem*, of the decedent's condition as a physician reasonably could be. The sum and substance of Dr. Ripepi's evidence, however, when set against the strong direct evidence of her behavior and competence, cannot convince the Court that Mrs. Townsend was so weak or infirm that she was susceptible to undue influence, over and beyond the natural effects of an age of eighty-six years combined with partial blindness. Dr. Ripepi testified to a normal decline or impairment of her mental and physical powers, stemming from her age and also from the fact that she had fractured her hip a year or more before her will and the final amendment to the deed of trust were executed. However, the law does not presume

that a wakening of intellect stems *ipso facto* from age or injury. The rule is that undue influence only occurs where there is an imprisonment of the mind and body, by fraud, threats, misrepresentation, flattery, coercion or the like, so that a testator's free actions are destroyed. Here there is absolutely no evidence to show that decedent's condition, no matter how favorably to contestant the record is read, ever approached the grim straits required by this rule.

Second, there was substantial direct testimony from witnesses who personally knew decedent well to the effect that her mental and physical faculties were intact when she executed the will and last amendment to the trust. Mr. Bishop, decedent's attorney, testified that at the time the documents were executed her mind was clear and alert and her memory was good. This was confirmed by testimony from Miss Kelly and Philip Price, Esq., as well as from George L. Morris, who was definite in his belief that Mrs. Townsend could not be influenced by anyone. Further, Dr. Edward G. Durkin, decedent's personal physician for several years, testified that he visited Mrs. Townsend on June 14, 1965, the very date of execution of the will and last trust amendment, and that he recalled that she was in good mental and physical condition at the time and was free of any substantial signs of mental deterioration. Dr. Wilfred E. Frye, decedent's ophthalmologist, also testified that when he last saw decedent she was alert and could see reasonably well for normal purposes.

Testimony to a similar effect was produced regarding decedent's condition at the signing of the deed of trust and its first two amendments. It is unnecessary, for present purposes, to detail the testimony of the various witnesses involved, as it was uniform that Mrs. Townsend signed the various papers voluntarily and without assistance, and only after a discussion of their provisions with her attorney.

We note at this point, however, that the amendment to the deed of trust dated February 20, 1964 is of special importance here, because it was therein that contestant and her issue were eliminated by decedent as primary beneficiaries of her estate. Mr. Price and Mr. Bishop discussed the reasons for this development chiefly under questioning by contestant's attorney, and it appears that Mrs. Townsend was motivated in her action by the cumulative effect of a number of circumstances. One was her belief that contestant had interfered in an unwarranted fashion with the administration of her husband's estate, by many criticisms of the actions of his personal representatives. Decedent was also annoyed by contestant's conduct in communicating with Mrs. Townsend through a domestic and not directly. In addition, decedent knew that contestant received substantial benefits from Mr. Townsend's estate, enough in themselves to guarantee her financial security. And, finally, Mrs. Townsend had always had great interest in charitable endeavors, and as she became more fully aware of the extent of her assets, she became more and more disposed to do something of definite benefit for charity.

The third obstacle to a finding of undue influence in this case lies in the admitted lack of benefit received by the alleged influencing parties. Viewing first the five documents under direct attack, and keeping in mind that those accused of exerting undue influence on testator are Mr. Bishop, Mr. Morris and Miss Kelly, we perceive immediately that Mr. Bishop is not a beneficiary under any of the documents, and that the interests created by them for Mr. Morris and Miss Kelly are identical to gifts contained in prior documents. Mr. Morris was present only at the execution of one amendment to the deed of trust, and Miss Kelly was present only at the signing of the will and the last amendment to the deed of trust, and took no part in any of the discussions preceding the execution of the papers. Nor is there any evidence that any of these

three persons had any interest in obtaining Mrs. Townsend's estate for those charities which were named by her as her residuary legatees.

Contestant argues, however, that we must go beyond the five documents, back to wills and codicils executed in 1961 and 1962, which she contends were the last valid instruments made by Mrs. Townsend, and wherein we find dispositions which do not include Miss Kelly and which give to Mr. Morris $25,000 less than he would receive under the now contested documents. There is, however, nothing in the record to justify a finding that December 31, 1962 marked the end of decedent's competence; but even if we would assume this to be the case, it would even then only vitiate the interests of Miss Kelly and Mr. Morris, which are relatively minor in decedent's testamentary scheme. *Paul Will*, supra. There is nothing substantial in this entire case which casts any doubt on testatrix's desire and competence to dispose of her estate exactly as she did.

The next allegations to consider are those of forgery. Contestant's proof of forgery is substantially confined to the testimony of Charles Andrew Appel, Jr., a retired officer of the Federal Bureau of Investigation. Mr. Appel's specialty is handwriting analysis, and he impressed the Court as a highly competent expert in that field.

Mr. Appel unhesitatingly testified that, in his opinion, the signatures on all five main documents were forgeries, and that in all likelihood these signatures were in the handwriting of Miss Kelly. He testified in detail concerning not only the five papers here directly under attack, but also regarding other documents signed by Mrs. Townsend after 1962, which he also deemed forgeries. Most of his testimony was technical and detailed, and no doubt in most cases led toward the conclusions he drew. Proponents in their brief point out inconsistencies in his evidence at some length, but we must assume that these

in no case can ever be completely eliminated. A lengthy review of Mr. Appel's testimony is not needed since the chief difficulty with it is not in its quality as opinion evidence, but rather in the weight to which such evidence is entitled in the face of the other direct testimony in the record.

In *Kadilak Will*, 405 Pa. 238, 243, the Supreme Court said:

> "Moreover, the opinion evidence of an expert, whether he be a doctor or any other kind of expert, is, in cases of forgery, undue influence, mental capacity and insanity, of very little weight and cannot prevail against direct factual credible evidence: (citing cases)."

Thus opinion evidence, although admissible because relevant, cannot be given much weight against the direct testimony of responsible witnesses such as is present here. At this juncture, we meet, head-on, a problem which lurks throughout every aspect of this case. For contestant to prevail, and her counsel so concedes, this Court would be required to find fraud and perjury which, to some extent at least, would involve two members of the Philadelphia bar, two physicians, a trusted financial representative and advisor not only of decedent but of her husband, decedent's trusted companion and nurse, and other responsible parties. There is nothing in the record to even suggest such a monstrous occurrence. We specifically hold that there has been no forgery proved.

With reference to the allegations of fraud, misrepresentation, and to the extent that it is set forth in the pleadings, conspiracy, these could be dismissed without discussion because of the failure of contestant to allege these grounds in the pleadings with even the minimum factual particularity required. However, even if the pleadings are ignored and the record reviewed as favorably to contestant as possible, there is no evidence of

fraud, misrepresentation or conspiracy as those terms are legally understood. No person is identified specifically as the perpetrator of any of these offenses. We further take it that to prove fraud or misrepresentation, there must be evidence of an intentional or at least negligent misstatement of fact, relied upon by the victim, and there is nothing in the record evidencing that such conduct was engaged in by anyone. And finally there is the same problem as existed in the case of undue influence, namely, that the principal beneficiaries of Mrs. Townsend are four charities and there was no showing whatever that any person connected with Mrs. Townsend legally or financially had the slightest personal interest in obtaining any of her property for these charities. We conclude that there is no evidence of fraud, misrepresentation or conspiracy.

In general, this disposes of the various direct arguments of contestant regarding the validity of the five instruments which she attacked. Certain other aspects of the proceedings should be discussed, however, so that there may be as little question as possible concerning the reasons for the various actions taken by this Court in the course of this litigation. The first relates to the admission into evidence of the many exhibits offered by contestant; a number of these were not admitted when offered, rulings on their admissibiilty being reserved until the record was completed. There are over one hundred exhibits actually involved, and if it were necessary to pass upon them individually many questions concerning their authentication and relevance would require attention. Now that we have heard, and carefully reviewed, the entire record, it is clear that no substantial reason exists to separate the wheat from the chaff of these exhibits, as the admission into evidence of all of them still cannot tip the scales in favor of contestant. Accordingly, all of the offered exhibits are admitted into evidence, and exceptions to this ruling are granted to the proponents.

In addition, a further allusion to the matter of discovery as it is involved in this case is in order. We have earlier stated that considerable discovery prior to hearing was permittted, upon the earnest application of contestant. After objections were filed to the second supplemental caveat, it appeared that the discovery carried out up to that time, had not enabled contestant to do more than slightly improve her prior pleadings, although she had taken lengthy depositions of all of the principal parties involved in Mrs. Townsend's affairs. It followed, therefore, that contestant's proposal to take further depositions from a vast additional number of witnesses not so closely connected to decedent constituted a "fishing expedition" in the classic mold, and it appeared unnecessary to a meaningful trial of the basic issues to permit further discovery. It must always be kept in mind that had the need or desirability of further discovery appeared at any time, this Court was in a position to continue or reschedule the hearings in the matter to permit this need to be met. Having now heard contestant's case, we have no difficulty in concluding that her right of discovery was adequately protected according to the precepts of *Thompson Will.*

Counsel for contestant, in addition to her other requests, requested a jury trial of this issue, which was refused by the Court. Considering the volume of testimony taken, including the depositions which would have been repeated in substance at a jury trial, it appears that this was a reasonable ruling. Moreover, we are constrained to point out that contestant was not harmed by this ruling, as a verdict in her favor on this record would as a matter of law have been set aside by the Court. Since we understand, however, that contestant wishes to raise a constitutional question concerning her right to a jury trial, we specifically pass upon that issue and affirm our action in refusing the same.

This matter is the typical and often repeated situation of a disappointed legatee attempting to avoid testamentary documents, after the death of their maker, which appear unfair and inequitable to him or her. The Court was impressed with the refinement and integrity of contestant and her husband, and imputes no improper motives to her. We are sure that she appreciated her relationship with the Townsends, contributed much to it, and for many years was as loyal to them as are many daughters. Nevertheless, much of the change in decedent's attitude was brought on by herself, and any event Mrs. Townsend clearly had the right, intellect and capacity to do as she did.

In this opinion, and the order to ensue from it, we are dealing specifically with proponents' motion to dismiss the second supplemental caveat and pleading attacking the deed of trust for lack of proof, that is, in effect to enter a compulsory nonsuit against contestant. Contestant argues that, regardless of the state of the proceedings in a substantial sense, the Court may not enter a nonsuit against a defendant (which status she claims she has) or even against a plaintiff (if contestant should be regarded as a plaintiff) after defendant has been allowed to introduce evidence. Contestant relies, inter alia, on the Act of 1875, P.L. 6, Sec. 1 (12 P.S. 645), but we think neither this statute nor contestant's position in general have merit as applied to this proceedings.

In the first place, the statute cited applies both by its specific language and its substance to trials in Common Pleas, and is the enactment which authorizes a trial judge in that Court to nonsuit a plaintiff who has not made out a *prima facie* case. While it is apparently true, as contestant argues, that nonsuits are not entered against defendants at trial in Common Pleas, we only confuse the present matter by insisting upon the characterization of its parties as either plaintiff or defendant. Probate, and contests over it, are actions *in rem*, for which the proce-

dure has been meticulously developed to meet the specific problems encountered in such actions. Logically, all of the litigants are plaintiffs seeking a judicial determination of the legal effect of a particular condition or set of circumstances. See *Mangold* vs. *Neuman*, 371 Pa. 496. Be the terminology as it may, the record in this litigation shows that the execution of the documents under attack has been proven by their proponents; that contestant has had a full opportunity to present her case contesting the validity of these documents, has done so and has rested; and that contestant's full case has been insufficient to discredit or invalidate any of them. Even if proponents were required to produce further evidence, contestant would be limited thereafter to rebuttal evidence. Under such circumstances, further evidence from proponents would be redundant and would serve no purpose.

FINAL DECREE

AND NOW, March 29, 1967, it is ordered and decreed that proponents' motion to dismiss the caveat, supplemental caveat and second supplemental caveat and also the pleading attacking the inter vivos deed of trust and its amendments is allowed with prejudice; and that this action shall have the effect of the entry of a compulsory non-suit against contestant; further, that the Register of Wills is directed to probate decedent's last will dated June 14, 1965; and, that the inter vivos deed of trust dated July 11, 1963 and amendments thereto dated February 20, 1964, March 6, 1964, and June 14, 1965 are declared to be valid and enforceable at law.

BY THE COURT

/s/ Alfred L. Taxis, Jr.
President Judge

IN THE ORPHANS' COURT
OF MONTGOMERY COUNTY, PENNSYLVANIA

No. 66,431

ESTATE OF MARY H. TOWNSEND,
a/k/a MARY HANLON TOWNSEND, DECEASED

No. 66,759

TRUST INTER VIVOS: MARY HANLON TOWNSEND,
SETTLOR

DECREE

AND NOW, this 21st day of April, 1967 it is hereby ORDERED AND DECREED that:

(1) leave Nunc Pro Tunc is hereby granted to Mary Townsend Cochran, Contestant in the aboye proceedings, to file with the Court en banc her Petition to Set Aside Final Decree dated March 29, 1967 and any Judgment of Non-Suit, within the meaning of the Act of March 11, 1875, P.L. 6, that may be incorporated therein;

(2) Said Petition in the form and style attached as Exhibit B to the Petition hereto annexed be, and the same is hereby, declared filed eo die; and

(3) This Court now sitting as a court en banc hereby dismisses said Petition to Set Aside after due consideration of the same.

BY THE COURT:

/s/ Alfred L. Taxis, Jr.
P.J.

IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

Nos. 42 and 43, January Term, 1968

ESTATE OF MARY H. TOWNSEND
(a/k/a MARY HANLON TOWNSEND, DECEASED)

APPEAL OF MARY TOWNSEND COCHRAN

Appeals from Decrees of the Orphans' Court of Montgomery County Dated April 21, and March 29, 1967, Respectively, in Estate of Mary H. Townsend, Deceased (No. 66431) on Behalf of Mary Townsend Cochran

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Nos. 44 and 45, January Term, 1968

TRUST INTER VIVOS: MARY HANLON TOWNSEND, SETTLOR

APPEAL OF MARY TOWNSEND COCHRAN

Appeals from Decrees of the Orphans Court of Montgomery County Dated April 21 and March 29, 1967, Respectively, in Trust Inter Vivos: (No. 66759) on Behalf of Mary Townsend Cochran

OPINION OF THE COURT

BELL, C. J. Filed: April 16, 1968

Mary Hanlon Townsend died October 1, 1965, leaving her last will, dated June 14, 1965, and an inter vivos Trust Deed, dated July 11, 1963, which was thereafter thrice amended. Mary Townsend Cochran, decedent's niece by marriage, has appealed to this Court from the several decrees (actually one decree which covered several subjects) of the Orphans' Court, which sustained decedent's will and her inter vivos Trust and the three

amendments thereto. The *final Decree*, from which these appeals have been taken, is as follows:

"AND NOW, March 29, 1967, it is ordered and decreed that proponents' motion to dismiss the caveat, supplemental caveat and second supplemental caveat and also the pleading attacking the inter vivos deed of trust and its amendments is allowed with prejudice, and that this action shall have the effect of the entry of a compulsory nonsuit against contestant; further, that the Register of Wills is directed to probate decedent's last will dated June 14, 1965; and, that the inter vivos deed of trust dated July 11, 1963 and amendments thereto dated February 20, 1964, March 6, 1964, and June 14, 1965 are declared to be valid and enforceable at law.

BY THE COURT

/s/ ALFRED L. TAXIS, JR.
President Judge"

We shall summarize the procedural posture of this case, which is very complex and covers some ten pages in appellant's brief, as well as the testimony which covers approximately 1,000 pages. We note that there were ten prior wills or codicils, but only the final will, dated June 14, 1965, is here involved.

Appellant has attacked five documents: (1) decedent's alleged will dated June 14, 1965, because of forgery; (2) decedent's revocable inter vivos Deed of Trust dated July 11, 1963, because of undue influence and the violation of a confidential relationship; and (3) three amendments to said Deed of Trust, dated February 20, 1964, March 6, 1964 and June 14, 1965, because of forgery.

Decedent's inter vivos revocable Deed of Trust of 1963 provided a life estate for appellant as well as a remainder

interest for her and for her issue. This 1963 Trust was first amended on February 20, 1964; this amendment substituted certain charities in lieu of several gifts to appellant and her issue. Settlor's charitable intent was continued in the March 6, 1964 amendment to the Trust, which merely substituted different charities for the previously named charitable beneficiaries. By June 14, 1965, decedent had transferred a substantial portion of her property to her inter vivos Trust and, as a result, her existing will was changed to the one here under attack, namely, her will dated June 14, 1965. Certain legacies were eliminated from the will because they were inserted into the inter vivos Trust amendments, and the principal change was the reduction of contestant-appellant's $100,000 legacy to a legacy of $10,000. Decedent died, we repeat, on October 1, 1965, and her will of June 14, 1965 was thereafter probated.

Appellant, in her very lengthy brief, has reduced her numerous objections and contentions to three questions, although in these questions she has included virtually all of her many and various contentions.

1. Appellant first contends that the Orphans' Court erred in refusing to permit the deposition of 27 (sometimes alleged to be more than 30) individuals and in limiting the testimony and depositions to six persons, who had testified or had been deposed for eight days in a transcript of over 1,000 pages. The names of these 27 desired deposing persons were culled by appellant from the answers to interrogatories served on appellees, as well as from the many documents. Appellant contends that these 27 persons are individuals "who *might be able to shed light* on the issues." * Appellant further complains that she was not given copies of "all memoranda, correspondence and writings relating to [decedent's testamentary writings] and/or other dealings of the said [executors]

* Italics, ours.

with the said decedent," and "was denied access" thereto. This contention was made after appellant had been furnished with copies of all of decedent's testamentary instruments subsequent to December 3, 1960, as well as with the originals of the five instruments she attacks. In addition, a multitude of other writings and records relating to many aspects of decedent's affairs had been tendered to appellant.

Appellant relies upon *Thompson Will*, 416 Pa. 249, 206 A.2d 21, to support her first contention. In *Thompson Will*, the Court appropriately said (page 261):

". . . Nothing in this opinion shall be construed as a bar to the allowance of discovery if the matters sought are relevant to the issue of the cause. While 'fishing expeditions' are not to be countenanced under the guise of discovery, requests for discovery must be considered with liberality as the rule rather than the exception."

Under the facts in the instant case, the Orphans' Court committed no abuse of discretion or error of law in disallowing appellant's demand for a further sweeping discovery which in reality amounted to a "fishing expedition," and these contentions of appellant are devoid of merit.

2. Appellant next contends that she has been denied her fundamental right of cross-examination because she was prevented by the hearing Judge from pursuing the questioning of Philip Price, Esq.—who was a witness to the Trust amendment dated February 20, 1964—concerning his whereabouts on that date. Price, one of Philadelphia's outstanding lawyers, had testified on direct examination that he witnessed the settlor sign the Trust amendment on that date. Appellant cross-examined Price, and during the cross-examination Price was unable to remember the exact date he went on a cruise in 1964, or the name of the boat. From this, appellant argues that Price could not have witnessed the settlor's signing of the Trust

amendment on February 20, 1964, and that that proves, or tends to prove, that the Trust amendment of February 20, 1964 was a forgery. It was appellant's expressed intention to prove that Price was not in Philadelphia on that date and, therefore, could not have witnessed the signing of the Trust amendment, and this supports her contention that the said Trust amendment must have been a forgery.

The proper scope of cross-examination is a matter for the trial Judge's sound discretion, and that discretion will be reversed by an appellate Court only for an error of law or a prejudicial abuse of discretion. *Rogan Estate*, 404 Pa. 205, 171 A.2d 177; *Littieri* v. *Freda*, 241 Pa. 21, 27, 88 Atl. 82; *King* v. *Holt*, 200 Pa. Super. Ct. 431, 435, 188 A.2d 760; *Commonwealth* v. *Minoff*, 363 Pa. 287, 294, 69 A.2d 145.

In *Rogan Estate*, 404 Pa., supra, the Court said (page 214):

"'. . . In Quigley v. Thompson, 211 Pa. 107, 109, 60 A. 506, it was said that,—"While the general principles applicable to the subject are clearly defined, it is in practice often difficult to determine the exact limits of proper cross-examination. Its range must of necessity rest largely in the discretion of the trial judge," quoted with approval in Littieri v. Freda, 241 Pa. 21, 27, 88 A. 82; see also Glenn v. Philadelphia and West Chester Traction Company, 206 Pa. 135, 137, 55 A. 860; Thomas & Sons v. Loose, Seaman & Co., 114 Pa. 35, 47, 6 A. 326.'"

The law is well and aptly stated in *King* v. *Holt*, 200 Pa. Super Ct., supra, at page 435:

". . . The scope or limitation of cross-examination is largely within the discretion of the trial judge and his action will not be reversed in the absence of abuse of that discretion, or unless an obvious disadvantage resulted therefrom to the other party."

We find no prejudicial abuse of discretion, or error of law. Moreover, appellant's contention becomes even more untenable when one considers that on the day following the Court's alleged reversible cut-off of cross-examination, counsel for Price tendered in open Court the information which had been sought and withheld. This line of questioning was not pursued by appellant, nor was the suggestion again made that Price was lying.

3. Finally, appellant argues that the trial Court had no power to grant appellees' motion for a compulsory nonsuit against her after the evidence of both the appellant and appellees had been finished, and that if it did, the decision to grant the nonsuit was against the weight of the evidence. Appellant contends that she stands in the position of a defendant and that nonsuits cannot be entered against defendants.

It will be noted, of course, that the Decree of the lower Court stated "that this action shall have the effect of the entry of a compulsory nonsuit against contestant."

Pa. R.C.P. 1512, Equity Actions, provides:

"Non-suit

"The court may enter a non-suit against the plaintiff under the same circumstances, subject to review in the same manner and with the same effect as in actions at law. Adopted Jan. 4, 1952. Eff. July 1, 1952."

Rule 1512 is impliedly incorporated into the Orphans' Court rules and practice by O.C.T. § 3, Rule 1. It provides:

"Conformity to Equity Practice

"Except where otherwise provided by a rule adopted by the Supreme Court or by an Act of Assembly, or by general rule or special order of the local Orphans' Court, the pleading and practice shall conform to the pleading and practice in equity in the local Court of Common Pleas."

While it would have been better for the Decree to have used the word "judgment" instead of "compulsory nonsuit," the language used did not constitute reversible error.

We have carefully considered all of appellant's contentions, and find no merit in any of them.

Decree affirmed; each party to pay own costs.

SUPREME COURT OF PENNSYLVANIA

EASTERN DISTRICT

PATRICK N. BOLSINGER
Prothonotary

GEORGE W. DUNN, JR.
Deputy Prothonotary

Philadelphia 19107

May 27, 1968

John A. Eichman, III, Esq.
1500 Walnut Street Bldg.
Philadelphia, Pa. 19102

Re: Estate of Mary H. Townsend, a/k/a
Mary Hanlon Townsend, Deceased
Appeal of: Mary Townsend Cochran
Nos. 42/45 January Term, 1968

Dear Sir:

This is to advise that the following Order has been endorsed on the Petition for Reargument filed on behalf of

the Appellant in the above captioned case and also the Supplemental Petition thereto:

"Per Curiam: 5/24/68.

Petition denied."

Very truly yours,

/s/ Patrick N. Bolsinger
PATRICK N. BOLSINGER
Prothonotary

PNB/k

cc: Thomas B. Harper, III, Esq.
Vincent C. Veldorale, Esq.
Philip A. Bregy, Esq.
Joseph Neff Ewing, Esq.
Arthur C. Dorrance, Jr., Esq.
Benjamin R. Neilson, Esq.
James E. Gallagher, Jr., Esq.
Charles A. Woods, Jr., Esq.

MR. AKER: I was just going to say, your Honor, that while it is out of place for us to proceed first, we have spoken to Mr. Eichman and he has some motions and things he wishes to discuss.

THE COURT: He has filed one motion. I received one by mail.

MR. EICHMAN: Yes.

THE COURT: Perhaps you are about to mention now, are you?

MR. EICHMAN: Yes sir, your Honor.

These (indicating) are the originals two original copies of that motion that I sent to your Honor and all counsel, listing formal objections and requests for exceptions in matters leading up to this trial.

THE COURT: I have read that motion a couple of times and, am I correct in my observation that it is an effort to preserve, for any appeal or argument, or any errors, to help you to allege—

MR. EICHMAN: That's right, your Honor.

THE COURT: (Continuing)—that the Court commited *en route* to the hearing today?

MR. EICHMAN: That's right, your Honor.

THE COURT: So that there is nothing I need act upon before we proceed? I will just take the matter under advisement and rule upon it,—

MR. EICHMAN: Thank you.

THE COURT: (Continuing)—at the proper time.

But, I may ask: have the proponents any response or reply to that motion?

MR. MARUTANI: Sir, may we ask leave to consider that possibility?

As of this point, we do not believe that any answers are required.

THE COURT: There is no hurry about it. I am not going to rule on it for a while. So, you might ponder that possibility.

MR. MARUTANI: We will let your Honor know very promptly.

PANEL I
Signatures Admittedly Genuine

Exhibit "LL" Will dated June 12, 1961

Signature from Exhibit "LL"

d June 12th , 1961.

Mary Hanlon Townsend
Mary Hanlon Townsend

Exhibit "MM" Codicil dated June 14, 1962

Signature from Exhibit "MM"

Executed June 14 , 1962.

Mary Hanlon Townsend [SEAL]
Mary Hanlon Townsend

above-named testatrix signed this and declared it

Exhibit "NN" Codicil dated November 14, 1962

Signature from Exhibit "NN"

Executed November 14 , 1962.

Mary Hanlon Townsend SEAL
resence the above-named testatrix signed this and decla

PANEL II

Exhibit "SS" Alledged Deed of Trust Amendment dated January 17, 1964

Signature from Exhibit "SS"

Executed January 17 , 1964.

Mary H. Townsend [SEAL]
Mary Hanlon Townsend

Exhibit "B" Writing of Lillian Kelly taken at depositions on June 27, 1966

Signature from Exhibit "B"

Mary H Townsend

CHART OF GIFTS UNDER ADMITTED AND ALLEGED TESTAMENTARY DOCU
MARY HANLON TOWNSEND DATED AFTER DECEMBER, 1960

		NO ORIGINAL	GENUINE	GENUINE	GENUINE		FORGED	FORGED	FORGED	FORGED	NO ORIGINAL	FORG
		Ex. F Codicil Dtd. 2/23/61	Ex. LL Will Dtd. 6/12/61	Ex. MM Codicil Dtd. 6/14/62	Ex. NN Codicil Dtd. 11/14/62		Ex. OO Codicil Dtd. 4/30/63	Ex. Two Deed of Trust Dtd. 7/11/63	Ex. PP Will Dtd. 7/11/63	Ex. SS Amend. to D/T dtd. 1/17/64	Ex. QQ Codicil Dtd. 1/17/64	Ex. RR Right o Sepulc Dtd. 1/
1	Mary H. Townsend							First life estate			Technical Changes and postponement of ultimate vesting of remainders.	
2	Mary H. Townsend's Executors											
3	Mary H. Townsend's Trustees U/D dated July 11, 1963								Entire Residue			
4	American Cancer Society											
5	Augustinian Seminary at Villanova		10000.00						10000.00			
6	Gladys Ayres						5 000.00		5000.00			
7	Bryn Mawr Hospital			10 000.00					10000.00			
8	Children's Hospital of Phila.			10 000.00					10000.00			
9	Christian H. Cochran		Cf. Note 1		Cf. Note 1			Cf. Note 1				
10	Mary Townsend Cochran		ditto		ditto			ditto				
11	Mary Townsend Cochran Descendants		ditto		ditto			ditto				
12	Elisha Wilson Cook						1 00000		1000.00		+ Chev. auto	
13	Margaret A. Cook						1000.00		1000.00			
14	Edward A. Durkin, M.D.						1000 0.00		10000.00			
15	Msgr. Farrell as Pastor of St. Monica's Church			50 00000					50000.00			
16	Father Flanagan's Boys' Home		10000.00						10000.00			
17	Fay Gildersleeve		5 000.00						5000.00			
18	Lillian Glass or	5000.00	5000.00	5000.00					5000.00			
19	Charles Glass			- 0 -								
20	Ann Gunther		5000.00						5000.00			
21	Kay Gunther		5000.00						5000.00			
22	Mary Gunther		5000.00						5000.00			
23	Lillian R. Kelly	50000.00	50000.00				+ $400./mo	$400/mo.	50000.00			+ bur Fig
24	Archbishop John J. Krol, Archbishop of Philadelphia		10000.00						10000.00			
25	Bishop Leonard's Charities, Inc.		Cf. Note 2						Cf. Note 2			
26	Henry Lang											
27	Elsbeth W. McKeever		5 000.00						5 000.00			
28	Mary C. Maguire Modest part of	Life int. in residuary est.	- 0 -									
29	Joseph F. Maguire		10000.00						10000.00		200 00.00	
30	Missionary Sisters of Sacred Heart Orphanage		Cf. Note 1		Cf. Note 1			Cf. Note 1				
31	George N. Morris or Carolyn B. Morris		50000.00				+ 25000.00		75000.00			
32	George N. Morris											
33	Phila. Museum of Art											
34	Father Reynolds as Pastor of St. John Vianney Church			50 00.00					50000.00			
35	Almira Saunders											
36	Russell Saunders											
37	Elizabeth T. Stoebenau		5000.00						5000.00			
38	St. Vincent's Hospital for Women and Children			20000.00					20000.00			
39	May Wainwright		5000.00						5000.00			
40	Mrs. Katharine M. Watt	Cf. Note 2	Cf. Note 2						Cf. Note 2			

ADMITTED TO PROBATE 1/21/64 GENUINE

KNOWN ORIGINALS DATED PRIOR TO 1/1/63 CLAIMED FORGED

KNOWN ORIGINALS DATED AFTER 1/1/63 FORGED

OMITTED AND ALLEGED TESTAMENTARY DOCUMENTS
SEND DATED AFTER DECEMBER, 1960

FORGED	FORGED	NO ORIGINAL	FORGED	FORGED	FORGED	FORGED	FORGED	FORGED	FORGED
. PP 11 Dtd. 11/63	Ex. SS Amend. to D/T dtd. 1/17/64	Ex. QQ Codicil Dtd. 1/17/64	Ex. RR Right of Sepulchre Dtd. 1/17/64	Ex. Three Amend. to D/T dtd. 2/20/64	Ex. TT Codicil Dtd. 2/20/64	Ex. Four Amend. to D/T dtd. 3/6/64	Ex. UU Codicil Dtd. 3/6/64	Ex. Five Amend. to D/T Dtd. 6/14/65	Ex. One Will dtd. 6/14/65
tire idue 10000.00		Technical Changes and postponement of ultimate vesting of remainders.			Personal Effects	1/4 residue		1/4 residue 10000.00	Personal Effects Entire Residue
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5000.00 5000.00 0000.00 0000.00 Note 2		+ burial rights						5000.00 5000.00 50000.00 +$400./mo. 10000.00 Cf. Note 2	
5 000.00 10000.00		200 000.00		Cf. Note 1	200000.00			1000.00 5000.00 200000.00	
75000.00 50000.00				One-third residue	100 000.00	- 0 -		75000.00 100 000.00 1000.00	
5000.00 20000.00 5000.00 Note 2					25000.00			1000.00 5000.00 20 000.00 25 000.00 Cf. Note 2	

NOTE 1 to APPENDIX II

Mary Townsend
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Amendments although bene
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The June 16, 1965 allege
Mrs. Cochran's legacy ba

NOTE 2 to APPENDIX II

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FORGED Ex. Three Amend. to D/T dtd. 2/20/64	FORGED Ex. TT Codicil Dtd. 2/20/64	FORGED Ex. Four Amend. to D/T dtd. 3/6/64	FORGED Ex. UU Codicil Dtd. 3/6/64	FORGED Ex. Five Amend. to D/T Dtd. 6/14/65	FORGED Ex. One Will dtd. 6/14/65
	Personal Effects	1/4 residue		1/4 residue 100000.00	Personal Effects Entire Residue
One-third residue One-third residue		1/4 residue 1/4 residue		5000.00 1/4 residue 1/4 residue	
Cf. Note 1 ditto	Cf. Note 1 ditto			100000.00 100000.00	
ditto	ditto +Chev.auto			- 0 - - 0 - 10000.00 500 000.00	
		1/4 residue	- 0 -	1/4 residue 5000.00 5000.00 5000.00	
				5000.00 5000.00 50000.00 +$400./mo. 10000.00 Cf. Note 2	
Cf. Note 1	200000.00			1000.00 5000.00 200000.00	
One-third residue	100 000.00	- 0 -		75000.00 100 000.00 1000.00	
	25000.00			1000.00 5000.00 20 000.00 25 000.00 Cf. Note 2	

NOTE 1 to APPENDIX II

Mary Townsend Cochran and her family were the principal beneficiaries under the Wills of Mary Hanlon Townsend at least as far back as her Will dated October 30, 1953 (Ex. C) to which there were two Codicils executed prior to her husband's death in December 1960, one dated May 7, 1955 (Ex. D) and the other April 26, 1956 (Ex. E). These earlier instruments are not abstracted on the Chart but under them, Mrs. Cochran and her husband each received a $10,000.00 legacy and with their descendants, received the bulk of the income and ultimately the residue. There was a contingent remainder in the event of complete failure of issue to the Missionary Sisters of the Sacred Heart Orphanage. The June 12, 1961 Will (Ex. LL) added Mrs. Townsend's personal effects to Mrs. Cochran's benefits. This general plan was continued even under the forgeries (all documents dated after January 1, 1963 being in this category) not only under the Wills and Codicils but also under the alleged Deed of Trust of July 11, 1963 (Ex. Two) and Amendments although benefits to others were gradually increased as shown on the Chart. However, the Codicil (Ex. TT) and Deed of Trust Amendment (Ex. SS) both dated February 20, 1964, allegedly increased Mrs. Cochran's legacy from $10,000.00 to $100,000.00, left Mr. Cochran's legacy at $10,000.00 and eliminated all other Cochran family benefits. These instruments also eliminated the contingent remainder of the Missionary Sisters. The June 16, 1965 alleged Amendment to the "Deed of Trust" cut Mrs. Cochran's legacy back to $10,000.00.

NOTE 2 to APPENDIX II

From February 23, 1961 on Mrs. Townsend provided either in her Will or in her principal "Deed of Trust" a trust of $100,000.00 for Mrs. Katharine M. Watt from the interest and/or principal of which she was to receive all the income but not less than $5,000.00 per year. Decedent's executors or trustees also had discretion to spend up to $1,000.00 for her funeral and the residue, or under some instruments a separate $100,000.00 in lieu thereof, was to go to Bishop Leonard's Charities, Inc.

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IN THE

Supreme Court of the United States

October Term, 1968.

No. 422.

MARY TOWNSEND COCHRAN,

Petitioner,

v.

GEORGE L. MORRIS and GIRARD TRUST BANK, EXECUTORS UNDER WILL, AND TRUSTEES UNDER DEED, OF MARY H. TOWNSEND, DECEASED; BRYN MAWR HOSPITAL; THE CHILDREN'S HOSPITAL OF PHILADELPHIA; FATHER FLANAGAN'S BOYS' HOME; BISHOP LEONARD'S CHARITIES, INC.; AMERICAN CANCER SOCIETY, PHILADELPHIA DIVISION, INC.; ESTATE OF JOSEPH F. MAGUIRE, DECEASED; RT. REV. MSGR. ALOYSIUS F. X. FARRELL; LILLIAN R. KELLY; EDWARD C. DURKIN, M. D.; ELIZABETH T. STOEBENAU; MOST REV. JOHN J. KROL, ARCHBISHOP OF PHILADELPHIA; ST. VINCENT'S HOSPITAL FOR WOMEN AND CHILDREN; WILLIAM C. SENNETT, ATTORNEY GENERAL OF COMMONWEALTH OF PENNSYLVANIA AS PARENS PATRIAE OF SUNDRY CHARITABLE BENEFICIARIES.

Respondents.

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR CERTIORARI.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968.

No. 422.

MARY TOWNSEND COCHRAN,

Petitioner,

v.

GEORGE L. MORRIS AND GIRARD TRUST BANK, EXECUTORS UNDER WILL, AND TRUSTEES UNDER DEED, OF MARY F. TOWNSEND, DECEASED; BRYN MAWR HOSPITAL; THE CHILDREN'S HOSPITAL OF PHILADELPHIA; FATHER FLANAGAN'S BOYS' HOME; BISHOP LEONARD'S CHARITIES, INC.; AMERICAN CANCER SOCIETY, PHILADELPHIA DIVISION, INC.; ESTATE OF JOSEPH F. MAGUIRE, DECEASED; RT. REV. MSGR. ALOYSIUS F. X. FARRELL; LILLIAN R. KELLY; EDWARD C. DURKIN, M. D.; ELIZABETH T. STOEBENAU; MOST REV. JOHN J. KROL, ARCHBISHOP OF PHILADELPHIA; ST. VINCENT'S HOSPITAL FOR WOMEN AND CHILDREN; WILLIAM C. SENNETT, ATTORNEY GENERAL OF COMMONWEALTH OF PENNSYLVANIA AS PARENS PATRIAE OF SUNDRY CHARITABLE BENEFICIARIES,

Respondents.

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR CERTIORARI.

I. QUESTIONS PRESENTED FOR REVIEW.

1. Whether Petitioner's constitutional rights were violated in a Will Contest where a State Trial Court, in the exercise of its discretion in accordance with prevailing law, limited the Petitioner's pre-trial discovery to extensive documentary evidence, interrogatories, and oral depositions of six key witnesses lasting eight days and filling over 1,000 pages of the record.

2. Whether Petitioner's constitutional rights were violated when the Trial Court, in accordance with accepted principles of Pennsylvania law, limited cross-examination of one of the subscribing witnesses by calling a halt to questions concerning his vacation trip to the West Indies after the execution of the Will.

II. STATEMENT OF THE CASE.

(a) The Substantive Facts.

This is a Will Contest which also involves the validity of a revocable inter vivos trust into which the Will poured the residue of the decedent's estate. The facts, as developed at the trial, present a not unusual picture of a childless widow who decided to leave the residue of her estate to charities rather than to her husband's niece who was already handsomely provided for by his Will.

The decedent's husband had died in 1960 leaving half of his estate to his wife and the residue (valued at about $1,500,000—record 21a-22a) in trust for his wife for life, followed by succeeding trusts for his niece (the Petitioner) and her issue. At the time of her husband's death the present decedent had a Will which would also have left the residue of her estate in trust for Petitioner and her issue (record 2149a-2156a). Following her husband's death, however, decedent realized that the Petitioner and her children were "well provided for" by her husband's Will (record 1653a) and she had felt for some time that she should be more generous to charities (record 1888a et seq.). She therefore changed her residuary gift to charitable institutions. The change was carefully considered after extensive discussions with her attorneys and financial adviser (record 1973a-1982a).

The net result is eminently fair. The husband's niece is well taken care of by his estate and the rest of the family wealth will go for the most part to five charitable beneficiaries—The Children's Hospital of Philadelphia, American Cancer Society, Father Flanagan's Boys Home, The Bryn Mawr Hospital and the Pastor of St. Monica's Church, Philadelphia, for the construction of a Home for the aged and infirm of the Parish.

The Petitioner originally attacked the Will and Deed of Trust on practically every known ground for a Will Contest (record 216a et seq.) but various grounds were abandoned from time to time as the case proceeded and it became evident there were no facts to support them. Eventually the Petitioner limited her attack to an allegation of forgery. In view of the fact that the various contested testamentary papers were all duly witnessed by entirely reliable persons present at their execution, the allegation of forgery must be based on the proposition that these witnesses—which included three respected members of the Philadelphia Bar and a vice president of one of our leading trust companies—conspired with decedent's housekeeper to forge the documents in question, and thereafter compounded their felony by committing perjury at the trial—all for purely altruistic motives since none of them benefited by the changes in question. The beneficiaries of the alleged fraud, conspiracy, forgery and perjury are the five diverse totally unrelated charitable institutions named above. At the close of Petitioner's case, the Trial Court found no grounds for the attack on the Will and Trust, directed the Will be admitted to probate and declared the trust valid. The Pennsylvania Supreme Court affirmed without dissent.

(b) Pre-Trial Discovery.

In response to petitions for pre-trial discovery (which in the Orphans' Courts of Pennsylvania is subject to court supervision) Petitioner was supplied with all testamentary writings of the decedent dating back to 1953 (record 58a-103a, 883a, and 2154a-57a), doctors', hospital and pharmacists' records of the decedent, and various other miscellaneous papers (record 2215a-18a and 2280a-2442a). In answer to interrogatories she was supplied with the names of all

persons known to the executors and the decedent's attorneys who may have had information concerning decedent's mental and physical condition (record 993a). Finally, the Petitioner was permitted to take pre-trial oral depositions of six persons—the decedent's personal physician, her chauffeur, her cook, her housekeeper, her financial adviser, and her attorney—witnesses which Petitioner herself had designated in a request for depositions in connection with a factual dispute that developed concerning her motion for the production of documents. These depositions lasted for eight days and covered over 1,000 pages of the record (1128a through 2144a) and were all admitted in evidence without objection and considered by the Trial Court in arriving at its judgment against the Petitioner.

Petitioner's demands for further pre-trial production of documents and oral depositions of 27 additional witnesses were denied.

(c) The Trial.

Contrary to statements and implications in the petition, there was no "withholding" or "suppression" of evidence at the trial, which lasted a full week for the petitioner's case alone. Her counsel was allowed to (and did) call and examine any witnesses he wished and the documents previously demanded for pre-trial discovery were by stipulation present in court as if on subpoena duces tecum (record 433a et seq.) and available for production to the extent that Petitioner might have properly identified them and showed their relevance in accordance with Pennsylvania practice. In the one case where such a document was so identified (the attorney-draftsman's office memorandum concerning one of the contested instruments), it was produced (record 543a-547a).

As the enormous record in this case shows, the hearing judge was most liberal in allowing Petitioner full scope in

her examination and cross-examination of various witnesses during the extensive trial—even to the extent of allowing digressions into matters having little or no relevance to the issues. However, when counsel for the contestant started a detailed examination of one of the decedent's attorneys (one of two subscribing witnesses to one of the many disputed documents) concerning his vacation trip to the West Indies following the execution of one of the documents, the Court limited the cross-examination, in accordance with accepted principles, after Petitioner's counsel had failed to make any satisfactory offer of proof (record 833a et seq.).

III. ARGUMENT.

There is no federally protected right to pursue irrelevant and immaterial lines of inquiry by pretrial discovery or cross-examination of witnesses in a state court proceeding to determine the validity of testamentary writings. Petitioner is merely complaining of the administration by a state court of its own rules which grant certain rights of discovery in specific situations subject to prescribed limitations. Neither trials nor discovery proceedings may be prolonged by irrelevant inquiry and the state courts are required to exercise their discretion to keep both testimony at trials and pretrial discovery within reasonable limits and relevant to the issues to be decided. Petitioner never showed or even sought to show that the areas of inquiry deemed irrelevant by the state courts had any significance whatever. Neither the state rules themselves nor the manner in which they were applied violated any of petitioner's constitutional rights.

For many years Rule 36 of the Pennsylvania Supreme Court Orphans' Court Rules has provided that "the local Orphans' Court by general rule or by special order may prescribe the practice relating to depositions, discovery and the production of documents." The reason for this rule is explained in the opinion of the Orphan's Court in the present case in its Special Order of March 7, 1966 (record 185a) where the court contrasts the issues of the ordinary case of trespass in the Common Pleas with the broad and often ill-defined issues before the court in Will Contests and other Orphans' Court proceedings where unlimited discovery could enable a contestant (whose main weapon is often delay) to hold up the settlement of an estate indefinitely. We would point out that this decedent died October 1, 1965, nearly three years ago, and her estate of approximately $6,000,000.00 remains undistributed to this day on account of this litigation.

The Supreme Court of Pennsylvania had dealt with the scope of Orphans' Court discovery under this rule in *Thompson Will*, 416 Pa. 249, 261, 206 A. 2d 21 (1965) where it stated that liberal discovery should be permitted, although " 'fishing expeditions' were not to be countenanced . . . ." As set forth above in the Statement of the Case, liberal discovery was permitted in this case and the Pennsylvania Supreme Court held that the Orphans' Court was well within its discretion in denying the unreasonable demands for additional pre-trial discovery. Petitioner was at no time denied access to any witnesses or documents at the trial in any instance where her counsel made a proper demand. For the Pennsylvania requirement for identifying and showing the relevance of demanded documents see *Chatinsky v. Dubrow Electronics*, 27 D. & C. 2d 486 (C. P. 4 Phila. 1962); *Day v. B. J. & H. Sales, Inc.*, 39 D. & C. 2d 422 (C. P. Luz. 1966); *Standard Pennsylvania Practice* (1958) Vol. 5, §§ 430, 432, pp. 611, 612.

Similarly, the Petitioner was allowed the broadest latitude in her counsel's examination and cross-examination of witnesses, although some restraint was imposed on cross-examination in accordance with accepted principles as set forth, inter alia, in *Kline v. Kachmar*, 360 Pa. 396, 403 et seq., 61 A. 2d 825 (1948).

The Index to the Record filed in this Court consists of five large pages of small print, the Index to the Exhibits 8 pages more, and the Docket Entries 3 pages more, making a total of 16 pages of separate items in fine print. Even a casual examination of this material discloses the thoroughness with which the Petitioner's various claims were all considered and carefully passed upon throughout the course of this extended litigation. The very careful and thorough opinion of the Trial Judge (printed in the Appendix to the Petition), as well as the entire record, will show that all these rules were liberally applied in favor of the Petitioner

throughout. The Pennsylvania Supreme Court unanimously agreed that the Trial Court exercised its discretion properly.

We are unable to see any constitutional objection to the rules themselves or to the manner in which they were applied. In her petition (page 22) Petitioner wonders whether she sufficiently preserved her right to raise a federal question in this Court. We can see no Federal question she could raise.

IV. CONCLUSION.

The Petition presents no proper question for review by this Court and should therefore be denied.

Respectfully submitted,

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No. 422

In the Supreme Court of the United States

October Term, 1968

MARY TOWNSEND COCHRAN,
Petitioner

v.

GEORGE L. MORRIS and GIRARD TRUST BANK, Executors Under Will, and Trustees Under Deed, of Mary H. Townsend, Deceased; BRYN MAWR HOSPITAL; THE CHILDREN'S HOSPITAL OF PHILADELPHIA; FATHER FLANAGAN'S BOYS' HOME; BISHOP LEONARD'S CHARITIES, INC.; AMERICAN CANCER SOCIETY, PHILADELPHIA DIVISION, INC.; ESTATE OF JOSEPH F. MAGUIRE, DECEASED; RT. REV. MSGR. ALOYSIUS F. X. FARRELL; LILLIAN R. KELLY; EDWARD C. DURKIN, M. D.; ELIZABETH T. STOEBENAU; MOST REV. JOHN J. KROL, ARCHBISHOP OF PHILADELPHIA; ST. VINCENT'S HOSPITAL FOR WOMEN AND CHILDREN; WILLIAM C. SENNETT, ATTORNEY GENERAL OF COMMONWEALTH OF PENNSYLVANIA AS PARENS PATRIAE OF SUNDRY CHARITABLE BENEFICIARIES,
Respondents

BRIEF OF THE COMMONWEALTH OF PENNSYLVANIA, BY WILLIAM C. SENNETT, ITS ATTORNEY GENERAL, AS PARENS PATRIAE, IN OPPOSITION

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COUNTERSTATEMENT OF QUESTIONS INVOLVED

The Commonwealth, by its Attorney General, as Parens Patriae, respondent, agrees with the statement of questions presented for review made by respondent charities and respondent trustees in their Brief in Opposition, heretofore filed.

COUNTERSTATEMENT OF THE CASE

The Commonwealth, by its Attorney General, as Parens Patriae, respondent, agrees with the Statement of the Case made by respondents charities and trustees in their Brief in Opposition, heretofore filed.

ARGUMENT

The Commonwealth, by its Attorney General, as Parens Patriae, respondent, joins in Argument in the Brief of the respondents charities and trustees in Opposition, heretofore filed.

CONCLUSION

For the reasons stated it is respectfully submitted that the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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Deputy Attorney General

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WILLIAM C. SENNETT
Attorney General

Attorneys for the Commonwealth of Pennsylvania by its Attorney General, as Parens Patriae, Respondent

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Respondents.

PETITIONER'S REPLY BRIEF

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Respondents.

PETITIONER'S REPLY BRIEF

I. ITEMS DISCUSSED.

Petitioner has endeavored to limit her reply to those arguments and argumentative facts in Respondents' Brief in Opposition to Petition for Certiorari which were not only incorrect but were not covered or anticipated in her

Petition and which were believed sufficiently important possibly to affect the outcome in these proceedings. Petitioner therefore now addresses herself only to the following passages which appear in the above Opposition Brief:

(1) In The Statement of the Case appearing under the sub-heading "(c) The Trial" on page 5 thereof the following "facts" are stated:

> "Her counsel was allowed to (and did) call and examine any witnesses he wished and the documents previously demanded for pre-trial discovery were by stipulation present in court as if on subpoena duces tecum (record 433a et seq.) and available for production to the extent that Petitioner might have properly identified them and showed their relevance in accordance with Pennsylvania practice. In the one case where such a document was so identified (the attorney-draftsman's office memorandum concerning one of the contested instruments), it was produced (record 543a-547a)."

(2) Under the caption "III. Argument" on page 7 of the same Brief the second and fourth sentences respectively read as follows:

> "Petitioner is merely complaining of the administration by a state court of its own rules which grant certain rights of discovery in specific situations subject to prescribed limitations."
>
> * * * *
>
> "Petitioner never showed or even sought to show that the areas of inquiry deemed irrelevant by the state courts (depositions of relevant witnesses and access to relevant documents) had any significance whatever." (Parenthetical remark ours.).

II. DISCUSSION.

A. Offers of Proof.

If we spell it out, the Respondents erroneously contend in the first and last quotations above that if Petitioner had

made a proper offer of proof showing specifically that any or all of the suppressed documents (correspondence, memoranda, cancelled checks, tentative drafts, etc.) were relevant to an issue associated with any of the twelve disputed writings of a testamentary nature allegedly executed by the decedent, then the Trial Court would, of course, have made said documents available to Petitioner and would have admitted them in evidence. As proof of this contention Respondents point to the release during trial of a memorandum from the attorney-draftsman's files (which was introduced by Petitioner as part of Exhibit DDD).[1]

Keeping in mind that all details concerning the number, dates and contents of the ultimately suppressed documents prior to and during trial were in the exclusive possession and knowledge of the Respondents because of adverse rulings by the Trial Court, there is demonstrated a leave taking from the practicalities of the trial of cases when one seriously attempts to maintain, as Respondents do, that Petitioner would have been given access by the Trial Court to each and every one of said documents merely upon demonstrating the relevance thereof. Obviously one cannot make such an offer of proof without first seeing the documents involved or otherwise acquiring some knowledge concerning them. And if such an offer of proof could not possibly have been made, then logically it must be admitted that the documents in question were effectively suppressed.

The citation by Respondents of the office memorandum of the attorney-draftsman (part of Exhibit DDD, Record 2286a-2289a) as a concrete illustration of their offer of

---

[1] Since there necessarily was suppression of relevant documents and hence no real day in court even under the Respondents' theory, it matters little that Respondents' contention conflicts with Petitioner's understanding that the Trial Court would not have released the documents ultimately suppressed for *any* reason so long as Respondents continued to oppose such release (Cf. Trial Court Opinion dated 3/29/67, Appendix to Petition for Certiorari, second sentence on page 28.)

proof contention is particularly inappropriate. Mr. Bishop (the attorney-draftsman) attempted under cross-examination during trial among other things to explain just when certain changes which appeared in the last of decedent's alleged testamentary documents took place in light, inter alia, of the spread between the dates of typing as shown by the typing symbols and the date of alleged execution. In support of his version Mr. Bishop produced the following:

(1) A typed Memorandum dated May 4, 1965;

(2) A typed memo for Mr. Bishop of a telephone message from Mr. Morris to Mr. Bishop's office dated May 18, 1965 containing instructions for Mrs. Townsend's instruments; and

(3) A note in Mr. Bishop's hand also dated May 18, 1965 of Mr. Bishop's return call on the same date to Mr. Morris.

These three memos theretofore suppressed by the trial court were promptly offered by Petitioner's counsel as her Exhibit DDD when he noted:

(a) How very fortuitously the memo dated May 4, 1965 (as to which Mr. Bishop could not give the typing date—Record 548a) supported Mr. Bishop's answers to a number of relatively minor points raised after Mrs. Townsend's death;

(b) That the telephone memos were not entirely consistent with:

(1) Either Mr. Morris' and Mr. Bishop's denial elsewhere of any inference that the ideas for what went into Mrs. Townsend's disputed testamentary documents may have originated with Mr. Morris rather than Mrs. Townsend (Record 1462a; 1825a-1826a);

(2) Or the fact that Mr. Morris is reported in the handwritten note to have said that Msgr. Far-

> rell was No. 1 choice with Mrs. Townsend and yet Mr. Morris instructed Mr. Bishop to give only $500,000. to the Monsignor although the four less favored (?) residuary charities would under the instruments as finally drawn receive one-quarter of the residuary estate, or about $1,000,000. each. (Cf. Appendix II to Pet. for Cert. second last column.)

Thus Exhibit DDD became available when Mr. Bishop produced said memos during trial for a purpose of his own and not because of anything done by Petitioner's counsel to obtain them for that purpose for which Petitioner's counsel introduced them.[2]

B. Administration of Pennsylvania Rules.

The second quotation above from the Brief in Opposition does not pretend that the suppression of relevant and material evidence was merely an erroneous application in this case by the Pennsylvania Courts of otherwise fair rules, but rather implied that the result complained of was merely a natural and usual result of the normal application by the Pennsylvania Courts of rules duly and properly instituted. In view of the radical and precipitous change in the general discovery practice of the Trial Court—from a system almost as liberal and broad as that provided for by the Federal Rules of Civil Procedure to one which denied litigants all discovery except such as was specifically allowed on petition and order in each case (which switch was instituted by the Trial Court on the eve (March 4, 1966) of the Trial Court's filing of a discovery opinion

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[2] Respondents' Brief refers to Record 543a-547a in connection with its contentions relating to Exhibit DDD. But a continued examination of the Record from 548a-574a (wherein Petitioner's counsel attempted, inter alia, to get Mr. Bishop to explain the above inconsistencies in Exhibit DDD) will convey some notion of the typical interference from the Trial Court which Petitioner's counsel usually experienced whenever one of the witnesses hostile to Petitioner seemed to be getting into deep water.

(dated March 7, 1966, record 183a et seq.) against Petitioner which would have been inconsistent with prior practice)—Petitioner vehemently insists that the Trial Court's new general discovery rule #36.1 was not properly instituted as to her, in addition to being otherwise deficient generally for reasons discussed below.

Changing ground rules that would or could affect the outcome in the middle of ball games has always violated American concepts of fair play whether or not the umpire is subjectively sincere in his belief that continued play under the starting rules would be unfair to one of the teams, particularly if that team is the home team. And in this case, Petitioner, a resident of Chevy Chase, Maryland, is still without any real explanation from the Pennsylvania Courts why, for example, she should be barred under the new rule (but not under the old) from seeing the cancelled checks on a five to six figure checking account in the Girard Trust Bank, supposedly subject only to decedent's personal signature, especially when:

(1) forgery is the principal issue;

(2) the last admittedly genuine specimen of decedent's signature was executed about six months to two and a half years prior to the dates of the various disputed testamentary writing; (Cf. Pet. for Cert. Appendix page 51, panel 1 for dates of oral specimen signatures admitted genuine; See Appendix II, Column heading for dates of testamentary writings.)

(3) the Girard Trust Bank is also involved in its capacity as Executor and Trustee of decedent's disputed Will and Trust.

But passing this, Petitioner would agree that the results in this case could normally and naturally be expected to occur in other will contests tried in any county of Pennsylvania which has a local discovery rule similar to the Trial Court's new discovery rule because it places in the Trial

Judge the power consciously or unconsciously to affect the outcome of the contest by his practically uncontrolled (as would appear from the Pennsylvania Supreme Court Opinion in this case) discretion in granting or withholding access to relevant and material evidence. However this a further reason *for* rather than *against* granting relief here since the potential denial of due process inherent in such a rule is general and not limited.

III. CONCLUSION

Petitioner respectfully urges that the positions taken in this case by the Respondent Charities and others in the Brief in Opposition, when viewed in the foregoing light, become tantamount to an admission of Petitioner's claim that relevant and material evidence was suppressed, from which a denial of due process necessarily follows. Petitioner, therefore, respectfully repeats her request that a Writ of Certiorari issue in this case.

In the alternative, if the denial of due process in this case is deemed so manifest that argument is considered neither necessary nor desirable, then this Honorable Court is respectfully urged to consider ordering a new trial at this juncture and (in view of Petitioner's prior experience with mid-case changes of local discovery rules) further ordering that said new trial be held after Petitioner has had a reasonable opportunity to reach all relevant and material facts under discovery rules which are both familiar and not subject to change introduced because of this case.

A system of discovery meeting these criteria presently exists in the discovery procedures applicable to civil cases in the United States District Court for the Eastern District of Pennsylvania and the application of its discovery practice would be doubly appropriate here. First, said discovery practice is quite similar to the practice which existed in the Orphans' Court of Montgomery County prior to the above-mentioned change therein. Second, all coun-

sel in this case are active members of one or more bars of a Pennsylvania court located within the territorial jurisdiction of the United States District Court for the Eastern District of Pennsylvania and therefore are presumably members of the bar of the latter court and hence familiar with its rules.

Respectfully submitted,

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